D.B. CIVIL SPECIAL APPEAL (WRIT) NO.300/2007

Mithesh Kumar & Ors. Vs. State of Rajasthan & Ors.

Date of Order :: September 20, 2007.

HON'BLE THE CHIEF JUSTICE MR.J.M. PANCHAL
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Satish Pachori for the appellants.

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The instant appeal is directed against judgment dated November 22, 2006 rendered by the learned Single Judge in S.B. Civil Writ Petition no.6384/2006 by which the prayer made by the appellants to set aside the judgment dated July 19, 2006 rendered by the District Court upholding the order dated June 12, 2006 passed by the trial court allowing the application for interim relief partly, is refused.

The tender work order dated January 3, 2004 was awarded by respondent no.2 to the respondent no.4 for construction of distributory under Bethali Irrigation Project. The respondent no.4 thereafter, entered into partnership with the appellants. The case of the appellants is that a joint account in the name of the appellants and the respondent no.4 was opened in Bank of Baroda, and that Purushottam Nagar and another had invested 50% of capital of the business. Mr. Purushottam Nagar expired in an accident, and according to the appellants, when all were busy in his cremation ceremony, the respondent no.4 opened a new account with Union Bank and transferred all amount of partnership firm lying in the Bank of Baroda account.

The appellants have, therefore, filed suit for accounts, dissolution of firm etc. They filed an application under Order 39 Rule 1 of the Code of Civil Procedure, 1908 and prayed to restrain the respondent no.4 from operating account maintained by him with Union Bank. Other interim reliefs were also claimed. The trial court granted injunction in part and restrained the respondent no.4 from operating account maintained by him with Bank of Baroda.

Feeling aggrieved, the appellants preferred an appeal before the District Court. The District Court rejected the appeal whereupon the appellants invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution by filing the above-numbered petition. The learned Single Judge has dismissed the petition by order dated November 22, 2006 giving rise to the instant appeal.

This Court has heard the learned counsel for the appellants and taken into consideration the documents forming part of the petition.

The judgment of the District Court which is final Court of facts, would indicate that the appellants have not approached the court with clean hands nor stated correct facts while claiming the interim relief under Order 39 Rule 1 of the Code. As no case was made out to restrain the respondent no.4 from operating the account which he is maintaining with Union Bank the said relief has not been granted. The relief to restrain the respondent no.4 from operating the bank account opened with Union Bank is refused inasmuch as the work order was issued by the respondent no.2 in the name of respondent no.4 as a

result of which he was entitled to receive the amount from the government.

On review of facts of the case, this Court finds that no case is made out by the learned counsel for the appellants to interfere with the order passed by the learned Single Judge in the petition and, therefore, the appeal which lacks merits deserves dismissal.

For the foregoing, the appeal fails and is dismissed.

(MOHAMMAD RAFIQ),J. **(J.M. PANCHAL),CJ.**

Skant/-